

SENATE BILL 275

By Tracy

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 41, relative to correctional institutions and inmates.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 41, is amended by adding the following language as new chapter 26:

Section 41-26-101.

(a) With this act, the general assembly defines the duties, responsibilities, and requirements for a public or private entity to house out-of-state detainees or sentenced prisoners in a jail, prison, or correctional facility in Tennessee. This act shall not apply to the department of correction nor its authority to house out-of-state prisoners pursuant to interstate compacts as defined by title 41, chapter 23; nor shall any provisions of this act supersede the provisions of the interstate compact on detainers as defined by title 40, chapter 31.

(b) Such duties, responsibilities and requirements shall include the following: public hearings, liability and indemnification, correctional practices, public safety and security provisions, inspections and monitoring, notifications, and reporting.

Section 41-26-102.

As used in this chapter, unless the context otherwise requires:

(1) "American Correctional Association" or "ACA" means a private, nonprofit organization that administers a national accreditation program for all components of adult and juvenile corrections.

(2) "Commissioner" means the commissioner of correction;

(3) "Contractor" means a public entity or private entity that contracts or proposes to contract with an out-of-state jurisdiction to house out-of-state detainees or sentenced prisoners in a jail, prison, or correctional facility located in Tennessee. In the event that a public entity subcontracts with a private entity to manage and operate a correctional facility, the private entity shall be considered the contractor for the purpose of this chapter.

(4) "Department" means the department of correction;

(5) "Out-of-state detainees or sentenced prisoners" means any prisoner detained or sentenced under the sovereign authority and statutory provisions of a jurisdiction or state other than Tennessee, when such prisoner is confined in Tennessee by a public or private entity. "Out-of-state detainees or sentenced prisoners" does not include:

(A) Prisoners in transit and/or being held by the United States citizenship and immigration services, the United States marshal service, the United States drug enforcement agency, the federal bureau of prisons, or other inmates in the custody of the United States department of homeland security or the attorney general of the United States; or

(B) Prisoners who are in transit and spend less than twenty-four (24) hours of confinement in a facility in Tennessee;

(6) "Private entity" means any private prison or jail management contractor or not-for-profit prison or jail management authority or entity;

(7) "Public entity" means any sovereign governmental jurisdiction in Tennessee;

(8) "Public hearing" means any public meeting regarding a proposal for the housing of out-of-state detainees or sentenced prisoners that was duly

noticed and posted at least thirty (30) days in advance, including notice in a general circulation newspaper in the area where the public hearing is to be held that states the nature, time and location of the meeting; and

(9) "Select oversight committee on corrections" means the committee for oversight of the state's corrections system, created pursuant by title 3, chapter 15, part 1;

Section 41-26-103.

After the effective date of this act, any contractor housing out-of-state detainees or sentenced prisoners in a jail, prison, or correctional facility in Tennessee shall submit in writing to the department the following information:

(a) The location of the facility;

(b) The design capacity of the facility;

(c) Prisoner classification or custody levels;

(d) A site plan and general architectural program describing the facility size, buildings, including security levels and specifications to support the identified security levels, and documentation that the facility complies with ACA standards;

(e) An operational program that demonstrates that adequate food, housing, medical care, and security will be provided for inmates, and that the facility will have the necessary qualified personnel to operate the facility programs, services and activities in accordance with ACA standards;

(f) Escape or major incident notification procedures in accordance with the department 's notification policies;

(g) Emergency response plans, including escape, as approved by all involved agencies;

(h) Personnel selection criteria and pre-service and in-service training requirements;

(i) Policies and procedures for use of force including deadly force; and

(j) An annual auditing and inspection program.

Section 41-26-104.

After the effective date of this act, any contractor housing out-of-state detainees or sentenced prisoners in a jail, prison, or correctional facility in Tennessee shall submit to the department a written agreement in compliance with the following provisions:

(a) Evidence of either pursuit or receipt of certification and compliance with the accreditation standards of the American Correctional Association.

Accreditation shall be achieved within three (3) years of the opening of the prison;

(b) Written acknowledgement that the contractor will provide access to records deemed to be public records in the same manner as mandated for the department and in compliance with the sending jurisdiction's laws on public records;

(c) For facilities under construction or that will become operational after the effective date of this act, written authorization for the construction and/or operation of the correctional facility from the governing body of any municipality in which the facility is to be located, or if the facility is not to be located within a municipality, written authorization from the governing body of the county in which the facility is to be located. Prior to granting written authorization such governing body shall hold at least one (1) public hearing regarding the location and operational plans for the prison; and

(d) An indemnification agreement approved by the attorney general and reporter wherein the contractor agrees to indemnify the state and appropriate political subdivisions for any and all extraordinary costs arising from the operation of the facility which makes necessary intervention by the state or a political subdivision.

Section 41-26-105.

The following requirements shall be met and maintained by any contractor:

(a) An independently validated objective classification system shall be in place and all potential out-of-state detainees or prisoners shall be classified before they are initially received. The objective classification system shall include:

- (1) History of institutional violence;
- (2) Severity of current offense;
- (3) Prior assault offense history;
- (4) History of institutional disciplinary infractions;
- (5) Escape history;
- (6) Current detainer or notification of pending charges;
- (7) Prior felony convictions; and
- (8) Stability factors, including any family, employment, education and substance abuse history.

(b) All out-of-state detainees or prisoners shall be reclassified at least as frequently as required by ACA standards.

(c) Out-of-state prisoners classified as maximum custody as defined by the department of correction's classification system shall not be received, housed or confined in a private prison in Tennessee.

(d) Under no circumstances shall a contractor employ any person convicted of a felony who has been incarcerated in any of the contractor's facilities for which the application for employment is being considered.

Section 41-26-106.

The contractor shall maintain a bond or comprehensive liability insurance coverage sufficient to cover any loss to individual citizens resulting from the operation of the contractor's facility. The bond or insurance required by this section shall not provide coverage for more than one (1) facility. If a private prison contractor owns or operates more than one (1) facility, separate bond and insurance coverage shall be obtained or provided for each facility.

Section 41-26-107.

The office of the comptroller of the treasury shall verify that any private prison incarcerating out-of-state inmates is seeking or maintaining ACA accreditation. The comptroller shall also audit a private contractor's compliance with the requirements of this act by verifying that information has been submitted as required and that insurance or bonding is sufficient in accordance with the provisions of this act. The comptroller, no less than annually, shall report its findings to the department of correction and the select oversight committee on corrections.

Section 41-26-108.

Any contractor found to be in violation of the requirements of this act shall forward to the office of the comptroller of the treasury its plan for corrective action and schedule for implementation. No more than sixty (60) days shall be permitted for completion of corrective action. In the event corrective action is not taken and the contractor continues to be in violation of the law, the commissioner of correction may

fine the contractor up to twenty-five percent (25%) of the annual cost of the facility's contracts with other states for any facility in violation.

SECTION 2. This act shall take effect July 1, 2007, the public welfare requiring it.